

United States Government

Department of Energy
Oak Ridge Operations Office

memorandum

DATE: August 7, 2000

REPLY TO

ATTN OF: AD-442:Aytes

SUBJECT: **SICK LEAVE TO CARE FOR A FAMILY MEMBER WITH A SERIOUS HEALTH CONDITION**

TO: ORO and OSTI Employees

On June 20, 2000, the final Office of Personnel Management (OPM) regulations became effective that allow an employee on a full-time work schedule to use up to 12 weeks (total of up to 480 hours) of sick leave each year to care for a family member with a **serious** health condition. For part-time employees the number of hours of sick leave available for use is prorated based on the employee's scheduled tour of duty each week. This new policy expands the existing policy which permits Federal employees to use a total of up to 13 days (104 hours) of sick leave each year for general family care and bereavement purposes.

The term **serious health condition** has the same meaning as used in the OPM regulations for administering the Family and Medical Leave Act of 1993. That definition includes such conditions as heart attacks, strokes, cancer, severe injuries, Alzheimer's disease, pregnancy, and childbirth. The term is not intended to cover short-term conditions for which treatment and recovery are very brief. The common cold, flu, earaches, upset stomach, headaches, routine dental or orthodontia problems, etc., are not serious health conditions unless complications arise.

The same limitations apply to the use of sick leave to care for a family member with a serious health condition as apply to the use of sick leave for general family care or bereavement purposes. A full-time employee may use 40 hours of sick leave each leave year for these purposes. Additional sick leave for general family care or bereavement purposes (up to a total of 104 hours) or to care for a family member with a serious health condition may be used if the employee maintains a balance of at least 80 hours of sick leave in his/her account. An employee may be advanced only an initial 40 hours sick leave to care for a family member and cannot be advanced sick leave to maintain the required balance of 80 hours.

If an employee has used 480 hours of sick leave to care for a family member with a serious health condition, he or she cannot use an additional 104 hours in the same leave year for general family care purposes. Overall, an employee is not entitled to more than 480 hours of sick leave each year for all family care purposes (general family care conditions and serious health conditions). This 480 hour limitation does not apply to an employee's use of sick leave for personal illness.

OPM has defined a family member to mean the spouse and parents thereof; children, including adopted children, and spouses thereof; parents; brothers and sisters, and spouses thereof; and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Attached is OPM's Questions and Answers on the Expanded Use of Sick Leave for Family Care Purposes. Additional information can also be found on the OPM Home Page at www.opm.gov/oca/leave/html/. Please contact your Personnel Management Specialist if you have any questions regarding these expanded sick leave regulations.

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Attachment

Questions and Answers on the Expanded Use of Sick Leave for Family Care Purposes

- Q. How will this new sick leave policy benefit Federal employees?
- A. Federal employees will now be permitted to use a total of up to 12 weeks of sick leave each year to care for a family member with a serious health condition.
- Q. Is this a new category of leave—i.e., "Sick leave for family care?"
- A. No. Federal employees must use their accrued sick leave to care for a family member with a serious health condition.
- Q. Who is covered by the new sick leave policy?
- A. Employees who are covered by the Federal annual and sick leave systems are covered by this new policy. (See 5 U.S.C. 6301.) U.S. Postal Service employees are not covered.
- Q. What are some examples of a "serious health condition?"
- A. Examples of "serious health conditions" include, but are not limited to, heart attacks, heart conditions requiring heart bypass or valve operations, cancers, back conditions requiring extensive therapy or surgical procedures, kidney dialysis, physical therapy, strokes, severe respiratory conditions, spinal injuries, appendicitis, pneumonia, emphysema, severe arthritis, severe nervous disorders, injuries caused by serious accidents on or off the job, clinical depression, recovery from major surgery, final stages of a terminal illness, and Alzheimer's disease.
- A "serious health condition" also includes ongoing pregnancy, miscarriages, complications or illnesses related to pregnancy (such as severe morning sickness), the need for prenatal care, childbirth, and recovery from childbirth.
- Q. Who is considered a "family member?"
- A. "Family member" means the following relatives of the employee:
- a. Spouse, and parents thereof;
 - b. Children, including adopted children, and spouses thereof;
 - c. Parents;
 - d. Brothers and sisters, and spouses thereof; and
 - e. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Q. Who determines who is a "family member?"

A. The head of an agency is responsible for administering the Federal leave program in his or her agency. Managers and supervisors must use their own judgment in applying this definition, consistent with the agency's internal policy and applicable bargaining agreement. This definition of "family member" has been used since the war in Vietnam to determine eligibility for leave to attend the funeral of a family member killed on active duty in the military. Agencies have had a great deal of experience in applying this definition under the Federal voluntary leave transfer and leave bank programs.

Q. How broadly should agencies define "family member?"

A. This benefit is intended to be "family friendly" and to permit employees to care for individuals outside the traditional nuclear family. OPM's regulations governing the leave transfer and leave bank programs and sick leave for family care are intended to address the needs of employees struggling to manage child care, elder care, family emergencies, and other personal responsibilities, while at the same time remaining committed to professional development and advancement. The definition of "family member" is not intended to benefit or further the social agenda of any particular group. Rather, this definition recognizes that in today's society there are both traditional and nontraditional families and that the *responsibilities placed on the employee are the same in both cases*

Q. What are the requirements for using sick leave to care for a family member with a serious health condition?

A. Employees must maintain a sick leave balance of 80 hours in order to use the full 12 weeks of sick leave to care for a family member with a serious health condition. Any employee may use an initial 40 hours of sick leave for family care purposes. To use more than 40 hours, an employee must maintain a sick leave balance of 80 hours at all times. This limitation applies to any employee using sick leave to care for a family member.

Q. Will employees be required to provide medical certification of a family member's serious health condition?

A. For any use of sick leave, an agency may require medical certification or other "administratively acceptable evidence." In addition, the final regulations permit an agency to establish a time limit for employees to produce such documentation.

Q. How is the new sick leave policy different from the current policy on using sick leave for family care purposes?

A. Most Federal employees may use a total of up to 13 days of sick leave each year for family care and bereavement purposes. The expanded regulations permit employees to

use a total of up to 12 weeks of sick leave each year to care for a family member *with a serious health condition*. The circumstances under which employees may use more than 13 days of sick leave therefore are more limited.

This benefit will broaden the options available for employees to meet their family responsibilities. Mothers, fathers, and grandparents (who are raising their grandchildren), and employees caring for their spouses, siblings, or parents will all greatly benefit from this more generous leave benefit. This benefit also will address the dilemmas faced by parents of special needs children when trying to balance their work and family responsibilities.

- Q. Are employees entitled to use 13 days of sick leave for general family care or bereavement purposes plus 12 weeks of sick leave to care for a family member with a serious health condition each year?
- A. No. If an employee previously has used any portion of the 13 days of sick leave for general family care or bereavement purposes in a year, that amount must be subtracted from the 12-week entitlement. If an employee has already used 12 weeks of sick leave to care for a family member with a serious health condition, he or she cannot use an additional 13 days in the same year for general family care purposes. An employee is entitled to a total of 12 weeks of sick leave each year for all family care purposes.

Example:

Jo Ann has 840 hours of accrued sick leave. She used 10 days (80 hours) of sick leave earlier this leave year to care for her daughter who had chicken pox. Last week Jo Ann's mother-in-law underwent emergency heart surgery and will need constant care for several weeks. Jo Ann may use up to a maximum of 400 hours (480 hour maximum entitlement minus 80 hours already used for family care purposes) to care for her mother-in-law as she recuperates.

- Q. Can a pregnant employee use sick leave for childbirth and to care for her newborn?
- A. Pregnant employees are entitled to use sick leave for prenatal and postnatal medical appointments and any periods of incapacitation as a result of pregnancy and childbirth. Complicated conditions may require additional sick leave for periods of incapacitation. A new mother is entitled to use up to 12 weeks of leave without pay under the Family and Medical Leave Act of 1993 (FMLA) for childbirth and care of the newborn. Unpaid leave under the FMLA must be used within 1 year following the date of birth. In addition, a mother may use up to 13 days of sick leave for well baby appointments and to care for a newborn child during minor illnesses.

Under the final regulations, a new mother may use a total of up to 12 weeks of sick leave to care for a newborn child with a serious health condition. If the new mother has already used 13 days of sick leave for family care purposes, she will be entitled to use the balance of the 12-week entitlement to sick leave.

Q. Can a biological father use sick leave for childbirth and care of his newborn?

A. A biological father is entitled to use sick leave to care for the biological mother for any period (up to a maximum of 12 weeks) during which she is incapacitated as a result of pregnancy and childbirth. This includes prenatal and postnatal doctor's examinations, hospitalization, and recovery from childbirth. In most cases, however, the biological mother's period of incapacitation will be less than 12 weeks (generally 6 weeks).

The new father may use a total of up to 13 days of sick leave for well baby appointments and to care for the newborn during minor illnesses. A new father may use up to 12 weeks of unpaid leave under the FMLA to care for his healthy newborn and may substitute annual leave for FMLA leave without pay. If the newborn has a serious health condition, the father may use any remaining portion of the 12-week entitlement to care for that child.

Q. Can a biological mother or father use 12 weeks of sick leave to care for a healthy newborn?

A. No. By law, an employee may use sick leave only for periods of sickness and other incapacitation or for purposes related to the adoption of a child. OPM has no authority to permit employees to use sick leave for purposes other than those permitted by law. A new parent may use a total of up to 12 weeks of sick leave to care for a newborn child *with a serious health condition*. He or she may use annual leave or leave without pay to care for a healthy newborn.

Q. Can adoptive parents use sick leave to care for a newly adopted child?

A. By law (5 U.S.C. 6307), an employee may use accrued sick leave "for purposes relating to the adoption of a child." An adoptive parent may use sick leave for any purpose that would allow the adoption to proceed, including, but not limited to, appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and for any periods during which an adoptive parent is ordered or required by the adoption agency or by a court to be absent from work to care for the adopted child. If the adoption agency or court do not impose such a requirement, the employee must use annual leave or leave without pay to care for the adopted child.

In addition, an adoptive parent may use a total of up to 13 days of sick leave for medical appointments and to care for the adopted child during minor illnesses. If an adoptive parent has not used 13 days of sick leave for general family care purposes, he or she may use a total of up to 12 weeks of sick leave to care for an adopted child with a serious health condition.

Q. Why weren't the final regulations made effective retroactively to the date the President directed OPM to expand the use of sick leave for family care purposes?

A. The issuance of retroactive regulations is neither the preferred nor usual method for rulemaking. Retroactivity in rulemaking is permissible where Congress has expressly authorized it in law, but that is not the case here. In addition, the arbitrary selection of a retroactive effective date would result in inequitable treatment of employees who were compelled to use leave without pay before that date for care of a family member with a serious health condition.

Q. Will an employee who has previously taken leave without pay under the FMLA to care for a spouse, son or daughter, or parent with a serious health condition be able to substitute sick leave retroactively for the leave without pay?

A. No. Employees may not retroactively substitute sick leave for leave without pay under the FMLA.

Q. Does the new sick leave policy permit an employee to take a total of up to 12 weeks of sick leave each year in addition to 12 weeks of leave without pay under the FMLA?

A. The new sick leave policy permits an employee to use sick leave to care for family members who do not meet the definition of "spouse, son or daughter, or parent" under the FMLA. Theoretically, an employee could use 12 weeks of sick leave to care for a family member who does not meet the "spouse, son or daughter, or parent" definition under the FMLA and, later in the leave year, invoke the FMLA and use leave without pay to care for a "spouse, son or daughter, or parent." However, we believe most employees who are now using FMLA leave without pay will choose to substitute their available sick leave for periods of unpaid leave under the FMLA to care for a spouse, son or daughter, or parent with a serious health condition.

Q. Won't this new benefit encourage employees to use more sick leave?

A. We anticipate that only a small percentage of the Federal workforce will have a need to use large amounts of sick leave for family care purposes. In addition, most Federal employees do not have 12 weeks of accrued sick leave available to use for this purpose.

Based on our experience, we believe less than 0.5 percent of the Federal workforce with 5 or more years of Federal service would actually use the maximum 12 weeks of sick leave. Federal employees accrue 13 days of sick leave each year. Although it is possible for an employee not to use any sick leave for 5 years so that he or she would accumulate 65 days (more than 12 weeks) of sick leave to use for family care purposes, this is highly unlikely.

We believe the ability to use additional sick leave will encourage employees to conserve their sick leave as insurance against the possibility that they will need to care for a family member in the future. In addition, the expanded use of sick leave for family care purposes will provide many benefits. Agencies will retain valuable employees and benefit from reduced costs (including training costs) to replace employees forced to separate from Federal service because of family responsibilities. In addition, there will be less need for employees to obtain donated leave through the voluntary leave transfer and leave bank programs, since a potential leave recipient faced with a family medical emergency will be required to use his or her own sick leave before receiving any donated annual leave from other Federal employees.

Q. Will employees approved for the Federal voluntary leave transfer and leave bank programs be required to use their sick leave before using donated annual leave?

A. Yes. Under the Federal voluntary leave transfer and leave bank programs, an employee may receive donated annual leave from other Federal employees if he or she is affected by a personal or family medical emergency and has exhausted his or her available paid annual and sick leave. An employee faced with a family medical emergency who has exhausted his or her entitlement to 12 weeks of sick leave for family care purposes (or a lesser amount if the employee has not accrued 12 weeks of sick leave) may receive donated annual leave. In addition, an employee who is using donated annual leave on the effective date of the new sick leave policy is required to use all of his or her sick leave available for family care purposes before he or she can continue to use donated annual leave.

Q. Will this benefit increase absenteeism and make it more difficult for agencies to fulfill their work requirements?

A. Although it is theoretically for an employee to use 12 weeks of sick leave to care for a family member with a serious health condition and 12 weeks of leave without pay under the FMLA to care for a spouse, son or daughter, or parent with a serious health condition, we believe it is highly unlikely that many employees will have a need or be able to use such large amounts of paid and unpaid leave for this purpose.

In addition, the purpose for which the additional sick leave may be used--i.e., a serious health condition--will limit the circumstances in which employees can use sick leave under the final regulations. We believe this expanded entitlement will provide the greatest benefit to employees who would otherwise be forced to use leave without pay under the FMLA to care for their family members. The expanded use of sick leave will permit these and other employees facing similar situations to maintain an income for part or all of the time they must be absent from work.